

ASSEMBLY BILL

No. 924

Introduced by Assembly Member Canciamilla

February 18, 2005

An act to amend Sections 14502, 14504, 14581, 14583, 14585, 14586, 14591, 14601, 14611, 14612, 14613, 14621, 14622, 14623, 14631, 14641, 14642, 14643, 14644, 14645, 14646, 14647, 14648, 14651, 14653, 14654, 14655, 14656, 14657, 14658, 14659, 14660, and 14672 of, and to add Sections 14502.1, 14512.5, and 14559.5 to, the Food and Agricultural Code, relating to fertilizer.

LEGISLATIVE COUNSEL'S DIGEST

AB 924, as introduced, Canciamilla. Ammonium nitrate.

Existing law generally regulates fertilizer materials and provides for the licensure of individuals who manufacture or distribute fertilizing materials.

This bill would define ammonium nitrate fertilizer, as specified. This bill would require persons who manufacture or distribute ammonium nitrate fertilizer, or who intend to do so, to inform the Secretary of Food and Agriculture and to obtain a license identifying him or her as a manufacturer or distributor of ammonium nitrate. This bill would require the secretary to adopt regulations requiring each person so licensed to maintain records of the date of each sale of ammonium nitrate fertilizer and the amount sold, and information about the purchaser, as specified.

Because a violation of provisions relating to fertilizing materials is a misdemeanor, by changing the definition of a crime, and by authorizing the secretary to adopt new regulations, thereby creating new crimes, this bill would impose a state-mandated local program.

Existing law requires the secretary to publish a tonnage report annually, as specified.

This bill would also require the secretary to publish a report on ammonium nitrate fertilizer sales annually that shall be made available to public safety officials upon request.

This bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14502 of the Food and Agricultural
2 Code is amended to read:

3 14502. The ~~director~~ *secretary* shall enforce this chapter and
4 adopt and enforce such regulations relating to the manufacture,
5 guaranteeing, labeling, and distribution of, the manner of
6 reporting tonnage for, and making inspection tonnage fee
7 payments upon, fertilizing materials as the director determines
8 necessary to carry out this chapter. A copy of those regulations
9 shall be mailed promptly upon adoption to each person who is
10 licensed pursuant to this chapter. The failure of any licensee to
11 receive a copy of the regulations is not a defense to a violation of
12 the regulations.

13 SEC. 2. Section 14502.1 is added to the Food and
14 Agricultural Code, to read:

15 14502.1. The secretary shall adopt regulations that require
16 each person licensed pursuant to this chapter to maintain records
17 showing the date of each sale of ammonium nitrate fertilizer and
18 the amount sold, and the name, address, and telephone number of
19 the purchaser.

20 SEC. 3. Section 14504 of the Food and Agricultural Code is
21 amended to read:

22 14504. The ~~director~~ *secretary* shall prepare an annual
23 statement of the operating expenditures and revenue related to

1 this chapter which shall be presented to the board for review as
2 soon as possible following the termination of the fiscal year. A
3 copy of this statement shall be made available to any interested
4 person upon request.

5 SEC. 4. Section 14512.5 is added to the Food and
6 Agricultural Code, to read:

7 14512.5. "Ammonium nitrate" means solid ammonium nitrate
8 that is chiefly the ammonium salt of nitric acid, contains not less
9 than 33 percent of nitrogen, one-half of which is in the
10 ammonium form and one-half of which is in the nitrate form, and
11 is produced, imported, stored, offered for sale, sold, offered for
12 distribution, received, or intended for use as a plant nutrient.

13 SEC. 5. Section 14559.5 is added to the Food and
14 Agricultural Code, to read:

15 14559.5. "Secretary" means the Secretary of Food and
16 Agriculture.

17 SEC. 6. Section 14581 of the Food and Agricultural Code is
18 amended to read:

19 14581. There is, in the department, a Fertilizer Inspection
20 Advisory Board consisting of nine persons appointed by the
21 ~~director~~ *secretary*, eight of whom shall be licensed under this
22 chapter and subject to the payment of the inspection fee in
23 accordance with this chapter, and one of whom shall be a public
24 member. The members of the board shall receive no
25 compensation, but are entitled to payment of necessary traveling
26 expenses in accordance with the rules of the Department of
27 Personnel Administration. These expenses shall be paid out of
28 appropriations made to the department pursuant to this chapter.

29 SEC. 7. Section 14583 of the Food and Agricultural Code is
30 amended to read:

31 14583. The board shall be advisory to the ~~director~~ *secretary*
32 and may make recommendations on all matters pertaining to this
33 chapter including, but not limited to, the inspection and
34 enforcement program, research and education, the annual budget,
35 necessary fees to provide adequate inspection services, and
36 regulations required to accomplish the purposes of this chapter.

37 SEC. 8. Section 14585 of the Food and Agricultural Code is
38 amended to read:

1 14585. The board shall meet at the call of the chairperson or
2 the ~~director~~ *secretary*, or at the request of any five members of
3 the board. The board shall meet at least once a year.

4 SEC. 9. Section 14586 of the Food and Agricultural Code is
5 amended to read:

6 14586. The ~~director~~ *secretary* shall accept the
7 recommendations of the advisory board pertaining to subdivision
8 (b) of Section 14611 if he or she finds them to be practicable and
9 in the interests of the fertilizer industry and the public. If the
10 ~~director~~ *secretary* does not accept the recommendations of the
11 advisory board, or any part thereof, the ~~director~~ *secretary* shall
12 provide the board with a written statement within 15 working
13 days of making his or her decision stating the reasons for not
14 accepting the recommendations, or any part thereof.

15 SEC. 10. Section 14591 of the Food and Agricultural Code is
16 amended to read:

17 14591. (a) Every person who manufactures or distributes
18 fertilizing materials shall, before he or she engages in the
19 activity, obtain a license from the ~~director~~ *secretary* for each
20 plant and business location which he or she operates. All licenses
21 shall be renewed in January of each odd-numbered year, and
22 shall be valid until December 31 of the following even-numbered
23 year, if issued in January of that same year. However, a person
24 who only distributes or who makes retail sales of packaged
25 agricultural minerals, packaged commercial fertilizers, packaged
26 soil amendments, or packaged auxiliary soil and plant
27 substances, alone or in any combination, which bear the
28 registered label of another licensed person, is not required to
29 obtain the license.

30 (b) *Every person who manufactures or distributes, or intends*
31 *to manufacture or distribute, ammonium nitrate as defined in*
32 *Section 14512.5, in this state, shall inform the secretary of that*
33 *activity or intent when applying for a license. The license*
34 *obtained by that person shall identify him or her as a*
35 *manufacturer or distributor of ammonium nitrate.*

36 (c) The license fee shall not exceed two hundred dollars
37 (\$200). The ~~director~~ *secretary* may, based on the findings and
38 recommendation of the board, reduce the license fee to a lower
39 rate that provides sufficient revenue to carry out this chapter.

1 SEC. 11. Section 14601 of the Food and Agricultural Code is
2 amended to read:

3 14601. Each differing label, other than weight or package
4 size, such as changes in the guaranteed analysis, derivation
5 statement, or anything that implies a different product, for
6 specialty fertilizer, packaged agricultural mineral, auxiliary soil
7 and plant substance, and packaged soil amendment shall be
8 registered. All registrations shall be renewed in January of an
9 even-numbered year, and shall be valid until December 31 of the
10 following odd-numbered year, if issued in January of that same
11 year. The registration fee shall not exceed two hundred dollars
12 (\$200) per product. The ~~director~~ *secretary* may, based on the
13 finding and recommendation of the board, reduce the registration
14 fee to a lower rate that provides sufficient revenue to carry out
15 this chapter. The ~~director~~ *secretary* may require proof of labeling
16 statements and other claims made for any specialty fertilizer,
17 agricultural mineral, packaged soil amendment, or auxiliary soil
18 and plant substance, before the ~~director~~ *secretary* registers any
19 such product. As evidence of proof, the ~~director~~ *secretary* may
20 rely on experimental data, evaluations, or advice furnished by
21 scientists, including scientists affiliated with the University of
22 California, and may accept or reject additional sources of proof
23 in the evaluation of any fertilizing material. In all cases,
24 experimental proof shall relate to conditions in California under
25 which the product is intended for use.

26 The ~~director~~ *secretary*, after hearing, may cancel the
27 registration of, or refuse to register, any specialty fertilizer,
28 packaged agricultural mineral, packaged soil amendment, or
29 auxiliary soil and plant substance, which the ~~director~~ *secretary*
30 determines is detrimental or injurious to plants, animals, public
31 safety, or the environment when it is applied as directed, which is
32 known to be of little or no value for the purpose for which it is
33 intended, or for which any false or misleading claim is made or
34 implied. The ~~director~~ *secretary* may cancel the registration of any
35 product of any person who violates this chapter.

36 The proceedings to determine whether to cancel or refuse
37 registration of any of those products shall be conducted pursuant
38 to Chapter 5 (commencing with Section 11500) of Part 1 of
39 Division 3 of Title 2 of the Government Code. The director shall
40 have all the powers that are granted pursuant to Chapter 5.

1 SEC. 12. Section 14611 of the Food and Agricultural Code
2 is amended to read:

3 14611. (a) Any licensee whose name appears on the label
4 who sells or distributes bulk fertilizing materials, as defined in
5 Sections 14517 and 14533, to unlicensed purchasers, shall pay to
6 the director an assessment not to exceed two mills (\$0.002) per
7 dollar of sales for all fertilizing materials. Any licensee whose
8 name appears on the label of packaged fertilizing materials, as
9 defined in Sections 14533 and 14551, shall pay to the ~~director~~
10 *secretary* an assessment of not to exceed two mills (\$0.002) per
11 dollar of sales. The ~~director~~ *secretary* may, based on the finding
12 and recommendation of the board, reduce the assessment rate to
13 a lower rate that provides sufficient revenue to carry out this
14 chapter.

15 (b) In addition to the assessment provided in subdivision (a),
16 the ~~director~~ *secretary* may impose an assessment in an amount
17 not to exceed one mill (\$0.001) per dollar of sales for all sales of
18 fertilizing materials, to provide funding for research and
19 education regarding the use and handling of commercial and
20 organic fertilizers, including, but not limited to, any
21 environmental effects.

22 SEC. 13. Section 14612 of the Food and Agricultural Code is
23 amended to read:

24 14612. Each licensee shall maintain in this state, or with the
25 ~~director's~~ *secretary's* permission at another location, an accurate
26 record of all transactions subject to assessment. These records
27 shall be maintained for a period of not less than three years
28 following the transaction and are subject to audit by the ~~director~~
29 *secretary*.

30 SEC. 14. Section 14613 of the Food and Agricultural Code is
31 amended to read:

32 14613. The payment required by Section 14611, together with
33 a form containing information prescribed by the ~~director~~
34 *secretary*, shall be made quarterly within one calendar month
35 after March 31, June 30, September 30, and December 31 of each
36 year, and that form shall be submitted on or before those dates
37 even if no fertilizer materials are sold. For any delinquency in
38 making the payment, or any deficiency in payment, the director
39 shall add a penalty of 15 percent to the delinquent payment. Any

1 delinquency which is more than 90 days past due is a cause for
2 cancellation of the license.

3 SEC. 15. Section 14621 of the Food and Agricultural Code is
4 amended to read:

5 14621. The last licensee selling or distributing fertilizing
6 material shall submit a tonnage report, on a form or a computer
7 printout format approved by the ~~director~~ *secretary*, containing
8 information on shipments received or deliveries made during
9 specified periods designated by the ~~director~~ *secretary*.

10 SEC. 16. Section 14622 of the Food and Agricultural Code is
11 amended to read:

12 14622. (a) The ~~director~~ *secretary* shall publish, at least
13 annually, a tonnage report. The ~~director~~ *secretary* shall distribute
14 the report and may charge a fee to cover the actual cost of
15 publishing and distributing the report.

16 (b) (1) *In addition to the report specified in subdivision (a),
17 the secretary shall publish annually an ammonium nitrate
18 fertilizer report that compiles information from persons licensed
19 as manufacturers or distributors of ammonium nitrate fertilizer
20 that includes the following information:*

21 (A) *The name, address, and telephone number of the
22 purchasers.*

23 (B) *The dates of all sales.*

24 (C) *The total amount sold.*

25 (2) *The information provided in this report shall only be made
26 available to public safety officials upon request.*

27 (c) Any information furnished to the ~~director~~ *secretary* under
28 this chapter shall not be disclosed in such a way as to divulge the
29 business practices of any licensee.

30 SEC. 17. Section 14623 of the Food and Agricultural Code is
31 amended to read:

32 14623. The tonnage report shall be submitted to the ~~director~~
33 *secretary* semiannually not later than January 31 and July 31 of
34 each year. The ~~director~~ *secretary* shall impose a penalty in the
35 amount of two hundred dollars (\$200) on any person who does
36 not submit the report on or before those dates.

37 SEC. 18. Section 14631 of the Food and Agricultural Code is
38 amended to read:

39 14631. Every lot, parcel, or package of fertilizing material
40 distributed into or within this state shall have attached to it, or the

1 shipment shall be physically accompanied by, a label as required
2 by the ~~director~~ *secretary*, by regulation. The ~~director~~ *secretary*
3 may require proof of labeling statements and claims made for
4 any fertilizing material. As evidence of proof, the ~~director~~
5 *secretary* may rely on experimental data, evaluations, or advice
6 furnished by scientists, including scientists affiliated with the
7 University of California, and may accept or reject additional
8 sources of proof. The ~~director~~ *secretary* may cancel the approval
9 of, or refuse to approve, a fertilizing material label if the ~~director~~
10 *secretary* determines that adequate proof of label claims do not
11 exist. The ~~director~~ *secretary*, after hearing, may cancel the
12 license of any person who distributes a fertilizing material with a
13 label for which approval has been canceled or a label that has not
14 been approved by the ~~director~~ *secretary*.

15 SEC. 19. Section 14641 of the Food and Agricultural Code is
16 amended to read:

17 14641. The ~~director~~ *secretary* shall have free access at
18 reasonable times to all records, premises, or conveyances which
19 are used in the manufacture, transportation, importation,
20 distribution, storage, or application of any fertilizing material.

21 SEC. 20. Section 14642 of the Food and Agricultural Code is
22 amended to read:

23 14642. The ~~director~~ *secretary* shall, at the times and to the
24 extent necessary for the enforcement of this chapter, do all of the
25 following:

- 26 (a) Take samples of any substance.
27 (b) Make analyses or examinations of any substance.
28 (c) Conduct investigations concerning the use, sale,
29 adulteration, or misbranding of any substance.

30 SEC. 21. Section 14643 of the Food and Agricultural Code is
31 amended to read:

32 14643. In determining the percentage of component parts of
33 any substance for the purpose of proper labeling, registration, or
34 determining compliance with representations, all analyses shall
35 be made according to a method determined by the ~~director~~
36 *secretary*.

37 SEC. 22. Section 14644 of the Food and Agricultural Code is
38 amended to read:

39 14644. The ~~director~~ *secretary* shall publish, at least annually,
40 the results of examinations or chemical analyses of official

1 samples of commercial fertilizer and agricultural minerals, and
2 any additional information the ~~director~~ *secretary* deems
3 necessary.

4 SEC. 23. Section 14645 of the Food and Agricultural Code is
5 amended to read:

6 14645. The ~~director~~ *secretary* may take a sample for analysis
7 from any lot of fertilizing material which is in the possession of
8 any producer, manufacturer, importer, agent, dealer, or user. The
9 sample shall be taken pursuant to regulations adopted by the
10 ~~director~~ *secretary*.

11 SEC. 24. Section 14646 of the Food and Agricultural Code is
12 amended to read:

13 14646. The ~~director~~ *secretary* shall establish sampling
14 procedures by regulation.

15 SEC. 25. Section 14647 of the Food and Agricultural Code is
16 amended to read:

17 14647. Upon the analysis of a sample of fertilizing material,
18 the ~~director~~ *secretary* shall issue a report showing the findings
19 and indicating that the product has met the guarantee or was
20 found to be deficient. However the ~~director~~ *secretary*, in
21 determining whether any product is deficient in guarantee or
22 misrepresented, may establish, by regulation, tolerances that
23 provide allowances for variations that occur in the taking,
24 preparation, and analysis of an official sample.

25 SEC. 26. Section 14648 of the Food and Agricultural Code is
26 amended to read:

27 14648. In any action, civil or criminal, in any court in this
28 state, a laboratory report from the ~~director~~ *secretary* which states
29 the results of any analysis, reported to be made pursuant to this
30 chapter, shall be prima facie evidence of all of the following:

31 (a) That the sample which is described in the laboratory report
32 was properly analyzed.

33 (b) That the sample was taken pursuant to this chapter.

34 (c) That the substances analyzed contained the component
35 parts which are stated in the laboratory report.

36 (d) That the sample was taken from the lots, parcels, or
37 packages which are described in the laboratory report.

38 SEC. 27. Section 14651 of the Food and Agricultural Code is
39 amended to read:

1 14651. (a) Unless otherwise specified in this chapter, any
2 violation of this chapter, or the regulations adopted pursuant to
3 this chapter, is a misdemeanor, punishable by a fine of not more
4 than five hundred dollars (\$500) for the first violation and not
5 less than five hundred dollars (\$500) for each subsequent
6 violation.

7 (b) The ~~director~~ *secretary* may, after hearing, refuse to issue or
8 renew, or may suspend or revoke, a license or registration for any
9 violation of this chapter or any regulation that is adopted
10 pursuant to this chapter.

11 (c) Upon calling a hearing, the director shall hand deliver or
12 mail a notice of the hearing to the licensee or registrant
13 specifying the time and place of the hearing at least 10 days prior
14 to the hearing. The hearing officer may do any of the following:

15 (1) Administer oaths and take testimony.

16 (2) Issue subpoenas requiring the attendance of the licensee,
17 registrant, or witnesses, together with books, records,
18 memoranda, papers, and all other documents that may be
19 pertinent to the case.

20 (3) Compel from the licensee or registrant and any witness the
21 disclosure of all facts known to him or her regarding the case. In
22 no instance shall any employee of Agricultural Commodities and
23 Regulatory Services serve as the hearing officer in any hearing
24 conducted pursuant to this section.

25 (d) Any person who is denied a license, whose license is not
26 renewed, or whose license is suspended or revoked pursuant to
27 this section may appeal to the ~~director~~ *secretary*.

28 SEC. 28. Section 14653 of the Food and Agricultural Code is
29 amended to read:

30 14653. The ~~director~~ *secretary* may seize and hold any lot of
31 fertilizing material which he or she has reasonable cause to
32 believe is in violation of this chapter or the regulations adopted
33 pursuant to this chapter.

34 SEC. 29. Section 14654 of the Food and Agricultural Code is
35 amended to read:

36 14654. If the ~~director~~ *secretary* seizes any lot of fertilizing
37 material, he or she shall immediately issue a hold order to the
38 person that has control of that material. The ~~director~~ *secretary*
39 may affix to that lot or package of the material a warning tag
40 which states that the lot is subject to a hold order.

1 SEC. 30. Section 14655 of the Food and Agricultural Code is
2 amended to read:

3 14655. (a) Any lot of fertilizing material for which a hold
4 order or notice is issued shall be held by the person having
5 control of the material and shall not be distributed or moved
6 except under the specific directions of the ~~director~~ *secretary*,
7 pending final disposition pursuant to this chapter. This does not
8 prevent the person who has control of the material from
9 inspecting any seized material or from taking a reasonable
10 sample for evidence while in the presence of a person designated
11 by the director.

12 (b) The movement, distribution, or sale of all or part of any
13 product that has been quarantined by the ~~director~~ *secretary*,
14 unless the movement, distribution, or sale has the prior approval
15 of the ~~director~~ *secretary*, is a misdemeanor punishable by a fine
16 of not more than five hundred dollars (\$500). A second or
17 subsequent violation of this subdivision is a misdemeanor
18 punishable by a fine of not less than one thousand dollars
19 (\$1,000).

20 SEC. 31 Section 14656 of the Food and Agricultural Code is
21 amended to read:

22 14656. Upon demand of the person who has control of the
23 seized fertilizing material, and within 10 days of sampling by the
24 ~~director~~ *secretary*, a subsample shall be returned from the state
25 laboratory to the person in control of the fertilizing material.

26 SEC. 32 Section 14657 of the Food and Agricultural Code is
27 amended to read:

28 14657. If the seized and held lot, as determined by the
29 ~~director's~~ *secretary's* analysis, is not in violation of this chapter,
30 the ~~director~~ *secretary* shall immediately release the seized and
31 held lot and remove the hold order.

32 SEC. 33 Section 14658 of the Food and Agricultural Code is
33 amended to read:

34 14658. If the seized and held lot is found to be in violation of
35 this chapter, the ~~director~~ *secretary* shall take either of the
36 following actions:

37 (a) Continue to hold the lot until such time as the requirements
38 of this chapter have been complied with, at which time the lot
39 shall be released.

1 (b) Issue orders for the disposal of the lot in a manner
2 specified by the ~~director~~ *secretary*.

3 SEC. 34 Section 14659 of the Food and Agricultural Code is
4 amended to read:

5 14659. The person who has control of a seized or held lot that
6 is found to be in violation of this chapter may appeal the result of
7 the analysis to the ~~director~~ *secretary*, in writing, within 15 days
8 of receiving the notice of violation. Upon receipt of that appeal,
9 the ~~director~~ *secretary* shall take a further sample of the lot in
10 question for analysis. The cost of sampling and analysis shall be
11 at the expense of the person who requests the further sample. The
12 findings of the analysis on appeal shall be conclusive.

13 SEC. 35 Section 14660 of the Food and Agricultural Code is
14 amended to read:

15 14660. The authority for the issuance of citations is limited to
16 the violations of Sections 14591, 14601, 14631, 14651, and
17 14655. The ~~director~~ *secretary* shall adopt procedures for the
18 issuance of citations and penalties, upon the recommendation of
19 the board. Chapter 3.5 (commencing with Section 11340) of Part
20 1 of Division 3 of Title 2 of the Government Code does not apply
21 to the procedures adopted by the ~~director~~ *secretary* pursuant to
22 this section.

23 SEC. 36 Section 14672 of the Food and Agricultural Code is
24 amended to read:

25 14672. Nothing in this chapter requires the ~~director~~ *secretary*
26 to report for prosecution or to institute injunctive proceedings for
27 any minor violation of this chapter whenever the ~~director~~
28 *secretary* believes that the public interest would be adequately
29 served by a suitable written notice of warning and compliance
30 with the notice.

31 SEC. 37 No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a
38 crime within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

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